

Written Statement of Paul Mitchell
Senior Director and Chief of Staff
Microsoft TV Division
Microsoft Corporation

Legislative Hearing on Internet Protocol and Broadband Services
Legislation

Staff Discussion Draft

Before the

Subcommittee on Telecommunications and the Internet
Committee on Energy & Commerce
U.S. House of Representatives

November 9, 2005

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Chairman Upton, Ranking Member Markey, and Members of the Subcommittee:

My name is Paul Mitchell, and I am Senior Director and General Manager for the Microsoft TV Division at Microsoft Corporation. When I testified before the Subcommittee earlier this year, my statement focused on how current Internet technologies are transforming the consumer experience, especially in the area of broadband platforms being used to deliver video and other advanced services using IPTV technology. I explained how IP services and products today enable the delivery of voice, data, and video in new and innovative ways and represent a remarkable change in the history of how consumers communicate and access video and data information.

Today's hearing moves us from the big picture to the critically important details: how proposed legislation would promote or impede broadband deployment and the continued growth of Internet content and services in America. In short, how can legislative levers be used to promote continued investment in Internet content and services and enhance consumer benefit from these tremendous IP services and products.

I will elaborate further but I have two overarching observations: First, the definitions in the bill could extend regulation to Internet services that have never been regulated before. Lest this Congress run the risk of impeding innovation by regulating new services, we suggest that the

definitions need to be revisited. Second, the policy of “net neutrality” – or the Connectivity Principles as Microsoft prefers to call them – has served consumers, content providers, and network operators exceedingly well over the past decade. These principles provide the certainty necessary for Internet companies to invest billions of dollars in new and innovative services and products which have added value to the underlying network. It also leaves it to the consumer in the marketplace to determine what services and products will succeed or fail. This policy is one of the fundamental reasons why the Internet has become what it is today. It does not need to be fixed. It only needs to be maintained in the broadband world.

Role of Microsoft in IP-Enabled Services.

Microsoft, as a technology provider, plays an important role for network providers and consumers alike as IP-based technologies and features are made available via a great diversity of devices, including PCs, TVs, mobile phones, and handheld devices. In our world, Internet or IP services and products generally mean those services and products that ride atop of or are connected to broadband transport networks. To name just a few examples, our MSN division delivers to computers, wireless phones, and handheld devices a variety of content, including news and entertainment, as well as other services such as downloadable music and video clips. In addition, consumers can sign up for Hotmail, a free email service, and MSN Messenger, a free instant messaging product. Our Live Meeting service enables a group of people in an enterprise environment or other setting to enjoy new options for real-time collaboration. Small groups and enormous groups can simultaneously talk among themselves, and either create or view a Power Point presentation, while the participants never leave their offices. This service increases worker productivity, using Microsoft software, broadband transport connections, and standard telephone

connections. Our Xbox Live Service offers another example of how IP technology can be used to improve a consumer experience, in this case gaming, by allowing gamers to compete against each other over the Internet and enhance their gaming experience by talking to each other via a VoIP feature.

My group, Microsoft TV, offers technology solutions to infrastructure and content providers. We developed the Microsoft TV Foundation Edition, which is currently being deployed by Comcast here in the U.S. It brings advanced programming-guide functionality, along with digital video recording (DVR) and a client applications platform to traditional cable networks. We also developed the IP-based TV platform products that SBC will soon deploy and that Verizon recently launched in Keller, Texas. These products enable delivery of a high-quality interactive video content service to consumers via the new facilities being deployed by these traditional telephone companies. The Microsoft TV products can be deployed over a variety of networks including a broadband cable, DSL, or even wireless networks. They will offer new interactive features for consumers, and we think consumers will find they create a very compelling experience.

VoIP – which refers to the delivery of voice over an IP based platform – is an important development on the Internet. Microsoft plays a role in advancing this technology, too. VoIP is a technology that can be used in a variety of ways and presents a definitional challenge for policy makers. VoIP encompasses a great range of capabilities – from a feature in a gaming console such as Xbox, to a computer-to-computer communication, to a full blown VoIP telephone service that is capable of interconnecting with the PSTN and terminating calls to any telephone on the planet.

As this Subcommittee considers the appropriate regulatory treatment for those VoIP services that are offered as a substitute for consumers' traditional phone services – what you might call a VoIP Telephony service – it must ensure that other VoIP offerings or capabilities are not swept inadvertently into the mix. For instance, no one sees the VoIP feature that can be used with our Xbox Live gaming service as a substitute for their landline phone. The Xbox Live VoIP feature does not use telephone numbers, cannot be used in conjunction with a phone, cannot connect to the PSTN; it can only be used if you have an Xbox game console, and users are identified solely by their gamer tags and not their names. In short, the Xbox Live VoIP feature is simply too limited to be of use to consumers as a substitute for their existing telephone service. There is no sound policy basis for regulating Xbox Live like a telephone. No one is going to stop using plain old telephone service because they've become an Xbox Live gamer.

Core Principles to Guide Legislation

The Subcommittee will no doubt hear today about the tremendous investments made by the network operators to promote broadband, and they should be commended for that commitment to the future. But the network operators are not alone in spending billions of dollars to deliver content and services to broadband Internet consumers. Microsoft and other Internet companies, such as Amazon.com, eBay, Google, Interactive Corp., Yahoo! and others, have also made billions of dollars of investments to make broadband Internet content, services, and products available to consumers and businesses, and some of that money is paid directly to telecommunications carriers. In the current calendar year, Microsoft alone is likely to spend over \$7 billion on research and development – an amount that has gone up by an additional billion dollars every several years over the course of our recent history.

This fact is sometimes lost in this debate, but it bears remembering that consumers and businesses buy content and services made available by Internet companies, not just technologies. Consequently, we recommend policies that also encourage Internet content and service companies, as well as technology companies, to make the necessary investments for the broadband Internet future.

When I testified earlier this year, I suggested four goals that should guide any legislative effort to promote broadband use and the future of the Internet. Let me briefly summarize those four goals:

1. Internet-based services and products should remain largely unregulated.

Internet-based services, that is, those services and products that ride atop or connect to the underlying broadband transport services, should remain largely unregulated and not be subject to the Communications Act. The success of the Internet as a tool for consumers and business has been remarkable, and Congress should proceed carefully so it does not inadvertently disturb this accomplishment. The choice of content and services available over the Internet is awe inspiring, and that stands out as a huge accomplishment of this medium. Thus, Congress should ask whether any proposed law or regulation that touches upon Internet services and products is necessary for the public good.

2. Consumers should be able to access any Internet site and use any lawful application or device with a broadband Internet connection – just as they have been able to do in the narrowband world.

This principle, which sometimes is referred to as “net neutrality” or “Connectivity Principles,” is really about letting consumers decide, and not network operators, what content and services succeed or fail on the Internet. Connectivity Principles are important as a policy matter because they determine whether consumers in the marketplace drive decisions on innovation and technology, or whether one lets the network operators steer those decisions. We

are pleased that the network operators are investing in technology and innovation, and we are proud partners with them in offering content and services to the public. We just think that other companies should continue to be able to offer Internet content and services as well.

In August of this year, the FCC adopted a Policy Statement endorsing the spirit and goals of the Connectivity Principles that several core Internet companies – Amazon.com, eBay, Google, Interactive Corp., Microsoft, Yahoo! and others – have long endorsed. Last week, the FCC voted unanimously to require SBC and Verizon to adhere to them, at least for two years. These principles have defined the Internet since it was launched. Specifically, they are:

- *Freedom to Access Content.* Consumers should have access to their choice of legal content.
- *Freedom to Use Applications.* Consumers should be able to run applications of their choice.
- *Freedom to Attach Personal Devices.* Consumers should be permitted to attach any devices they choose to the connection in their homes.¹

These hallmarks of consumer expectations have been, and remain, fundamental to the success of the Internet. Those basic features defined consumer and company experiences on the Internet, and we agree with others in the industry that these principles should be carried forward to the Internet broadband future.

3. If policy makers act, they should maintain a “light touch” and act only with respect to those services that give rise to present day policy questions.

In order to avoid constraining the continued growth of IP services, any regulation imposed on IP services should be done with a light touch and only where there is a policy issue that needs to be addressed. For example VOIP is a technology that can be used in a variety of ways. To the extent policy makers are seeking to address a policy objective, they should not focus on all VOIP technologies. Instead they should focus only on those that present a policy

¹ FCC Policy Statement (Aug. 5, 2005); SBC-AT&T and Verizon-MCI Merger Approvals (Oct. 31, 2005).

question. If policy makers seek to preserve E911, we would suggest that they need not look at implementing E911 in the Xbox Live Service but instead may want to explore those VOIP services that are substitutes for existing telephone service. The principle to maintain is that, to the extent regulation is needed, policy makers should act with the lightest touch necessary to solve their policy objective in order to provide as much latitude for the continued innovation and growth of Internet services as possible.

4. Where subject to regulation, Internet and video services should be subject exclusively to Federal jurisdiction.

Congress should protect IP services and all video and broadband companies from conflicting and overlapping State and local regulation. These services are used as an integral part of interstate commerce, they utilize interstate or global networks, and they generally require the transmission of data and information across state lines. As a consequence, where subject to regulation, they should be exclusively within Federal jurisdiction. The FCC has correctly decided that VoIP is an interstate service, and that conclusion should apply to other IP-based services that are subjected to regulatory treatment, as well as to multichannel video programming services more generally.

The Staff Discussion Draft

To focus our comments on the 70-page draft bill, I will address how the Discussion Draft responds to each of the four goals we see for any legislation. For purposes of today's testimony, I will comment on the weightiest issues. However, I am hoping my Microsoft colleagues will have the opportunity for broader conversations with the staff about narrower changes to the draft.

1. Internet services and products should remain largely unregulated.

The keystone of the draft legislation is found in the definitions, and we are concerned that in some places they sweep broader than necessary. Under current law, services and products that ride atop of or are connected to broadband transport networks have not been subject to regulation, while the underlying transport layer has been regulated for access, interconnection, intercarrier compensation, and other purposes. The Discussion Draft, specifically the definition of BITS, could be interpreted to extend regulations to Internet services, such as MSN, Hotmail, Google Mail, E*Trade, or Yahoo!. These services have never been subject to regulation because they do not involve transport of information and are simply destinations on, or information services made available via, the Internet. In addition, we would suggest that these services do not pose public policy questions such as those that might be posed by a BITs service. As a result, we think they should continue to be unregulated. We urge the Subcommittee to maintain its focus on those entities that provide facilities directly to subscribers that enable the subscriber to transport information to or from the Internet. This formulation would enable important societal regulatory objectives to be met while not extending regulation to new areas of the Internet.

The definition of VoIP also sweeps more broadly than necessary. Some companies that provide online customer service are beginning to make use of so-called “click-to-call” capabilities. For example, you can talk to an operator at LensExpress (a contact lens fulfillment company) via the company’s 800 telephone service or via a one-way VoIP based call from your PC to the company’s phone bank. If the call is completed via the PSTN, the Discussion Draft would treat that capability as a regulated offering, subject to 911 requirements, USF fees, consumer protection rules, and the like. Yet, that feature is not a substitute for traditional phone service – it is only one-way. It is not the intent of LensExpress to be considered the provider of a

phone service. The company only wants to simplify its customer service – and yet that capability arguably would lead to LensExpress being covered by the bill. Over the longer term, because the bill gives the FCC discretion to expand the definition of VoIP service, the bill’s provisions could be extended to the Xbox Live voice feature simply because Xbox Live uses an alternative “identification method” to create the voice connection between two Xbox gamers. In the area of VoIP, we urge the legislation apply only to those services that are a substitute for traditional voice service; that have a North American Numbering Plan number; that are interconnected with the PSTN; and that enable a user to send *and* receive calls to and from the public switched network. The 911 provision of the bill refers to these services as “send-and-receive” services (at Section 204). We recommend that this concept be used to define the class of VoIP services subject to any regulation, lest Congress stymie the development of VoIP capabilities while those capabilities are still emerging.

2. Consumers should be able to access any Internet site and use any lawful application or device with a broadband Internet connection – just as they have been able to do in the narrowband world.

Section 104 of the Discussion Draft addresses the Connectivity Principles. As I stated above, the concept that consumers can access the content and services they want on the Internet without interference or permission from the network operator is not new. That concept of Connectivity Principles is even older than the Internet itself. In fact, you can argue that without these principles, the Internet would not have evolved as it has. If you consider the Internet a remarkable engine of innovation and growth, then you should credit in part Connectivity Principles for that result. We think that policy – letting consumers decide – has served consumers, content providers, and network operators exceedingly well over the past decade. That policy is not broken. It does not need to be fixed. It only needs to be maintained in the broadband Internet world.

We have joined in the past with other leading Internet companies, including Amazon.com, eBay, Google, Interactive Corp., and Yahoo!, to advocate for the continuation of Connectivity Principles, and we are pleased that the issue has been considered in the Discussion Draft.

Two comments: First, the policy embodied in Section 104 on Connectivity Principles is an important one and we commend you for including this concept in the Discussion Draft. However, the provisions in Section 104 need improvement in specific areas. The “preserved authorities” language is uncomfortably ambiguous in some parts and overly broad in others.

Second, and this is the critical issue: What entities need to adhere to Section 104? The version of the Discussion Draft that we have reviewed states that only those persons which provide BITS need to follow the net neutrality requirements. Those entities that provide “Broadband Video Service,” which includes “information derived from the Internet,” do not have to comply with the net neutrality requirements.

Our view is that if a BVS provider does include Internet content or access, then of course the Section 104 Internet freedoms should apply. Alternatively, if they do not include Internet content or information derived from the Internet, then the Internet freedoms should not apply.

We have heard that part of the reason for excluding BVS providers from Section 104 stems from a concern for spam or viruses. Let me start by saying that we respectfully disagree with that claim as a technical matter. But more importantly, Section 104 contains clear language that enables a network operator to manage a network to ensure network security and reliability. Network management is an important function, but within the terms of Section 104, the network operators have the authority they need to guard against these possible problems. That is not an argument for exempting BVS providers that include Internet content from Section 104.

In short, those entities that provide subscribers with Internet content or information derived from the Internet should adhere to the core principles of net neutrality found in Section 104, and those principles should be clarified to provide consumers and content providers with clear and unambiguous protections.

3. If policy makers act, they should maintain a “light touch” and act only with respect to those services that give rise to present day policy questions.

As I explained above, we are concerned that the definitions of BITS and VOIP in the bill would extend regulation to Internet services that have never been regulated and that should remain unregulated because they ride atop the connection layer or they are not a substitute for traditional phone service. To illustrate: we do not see any reason why Xbox Live, a feature that enables persons playing a game to talk (well, “trash talk” to use the technical term), should have to offer E911 service. Similarly, we do not see why a collaborative work program, that enables users to review a document together and have a conference call to discuss it, should have E911 obligations. Or why Hotmail or MSN should have to register with all 50 states in order to continue to provide service. The changes to the definitions we recommend above would keep the focus on the activity that should be covered to achieve important societal objectives without going too far.

I also want to address briefly the important issue of universal service funding. We recognize that the Discussion Draft refers this issue to the Commission, but we believe that the Commission should use a “connections” approach and not a numbers and other identifiers approach, nor the current system, in order to finance the USF system. A connections approach reduces arbitrage and captures all those persons who use the telecommunications infrastructure, and that is who should be contributing to its support.

4. Where subject to regulation, Internet and other video services should be subject exclusively to Federal jurisdiction.

We think that the current regime of having local and state governments license and regulate video distribution networks needs reform. The current system does not work for telephone companies trying to enter the business, and it does not work for cable companies already in the business. Both networks should not be subject to local and state regulation but should be covered by a federal regime. The same should apply to all Internet services. These are inherently interstate services that where regulated should be committed to the federal government for exclusive regulation. The Discussion Draft takes some steps in that direction, though it could be improved to ensure that cable companies today get out from under the burden of state and local regulation.

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Thank you for the opportunity to provide my views on this critically important legislative proposal. I look forward to your questions and to working with you and your staff going forward on these and other aspects of the draft.